

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

June 3, 2009

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, June 3, 2009 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt, Richard Taylor, first alternate Mike Mello and second alternate, Raymond LaFazia.

Also present were: Peter Ruggiero, Town Solicitor , Gareth Eames Building/Zoning Official and Sally Ferreira, Court Reporter.

1. A petition has been filed by the Tiverton Yacht Club, 58 Riverside Drive requesting a variance to Article V, Section 1 of the Tiverton Zoning Ordinance in order to permit existing lockers to remain located at 0 Riverside Drive, Tiverton, RI being Map 6-5, Block 73, Card 30 on Tiverton Tax Assessor's maps closer to the side yard setback than currently allowed in a waterfront zoning district.

DECISION:

Ken Tremblay the attorney for the Tiverton Yacht club requested a continuance due to the fact the property next door that the Yacht Club is obtaining land from has been sold and the attorney for the new owner is conducting their own survey. Mr. Campbell had no objection to the continuance. The petition was continued to the next meeting on July 1st, 2009

2. A petition has been filed by Olive M. & Rosemary Eva of 4019 Main Road, Tiverton, RI appealing the decision of the Building Official to issue a permit on January 13, 2009 for a freestanding sign located at 3988 Main Road, Tiverton, RI being Map 2-3 Block 125 Card 16 on Tiverton Tax Assessor's Maps and located in an R80 zoning district.

DECISION:

Chairman David Collins recused himself from this petition because he is an abutter. Vice-Chairman Jay Jackson conducted the meeting.

Attorney Jeremiah Leary representing the appellant/petitioners gave a brief opening and stated this is an appeal from a permit granted to Adam D. VanDale to erect a free-standing sign for an entity described as the Back Alley Woodworks located at 3988 Main Road issued by the building inspector on January 13th,

2009. Attorney Chuck Allott from the law firm of Hinckley, Allen & Snyder introduced himself and stated he was present on behalf of the property owners, Michael and Louise Silverman.

Mr. Leary further stated this permit allows two free-standing signs on the lot, one for each of the nonconforming uses. The appellant's position is the zoning ordinance should not be interpreted to allow a free-standing sign for more than one nonconforming use on the lot. The second issue Attorney Leary stated the sign for the back building, Back Alley Woodworks, the use has been abandoned and no permit should be issued or allowed. Mr. Leary went on to say in 1964 when the zoning ordinance was enacted, there was no business use in this back building and, therefore, there never was a nonconforming use of the back building.

Mr. Leary asked that the building permit application be marked as Exhibit A and some photographs showing the free-standing sign for the Back Alley Woodworks and the free-standing sign for the business known as Sakonnet Purls and a close-up of both of those signs taken from across the street on Main Road and the free-standing sign for the Mill Pond Shops marked as Exhibit B one, two, three and four. Mr. Leary explained the Mill Pond Shops sign is a free-standing sign with a group of businesses and that is what should be done in this case. Mr. Leary presented the Board with copies of the present section of the zoning ordinance that he would be referring to for the Board's reference.

Mr. Leary presented Rosemary Eva as a witness. Ms. Eva was sworn in and testified that the back property was abandoned. Ms. Eva gave extensive history of the property and the past owners. Ms. Eva was cross-examined by Mr. Allott and answered numerous questions asked of various audience members.

At this time, Mr. Leary presented the Board with an affidavit of Mr. Booth in lieu of his live testimony. Mr. Leary stated Mr. Booth who had resided in what is now the Sakonnet Purls was prepared and willing to testify both times this matter was continued at the request of the property owners. Mr. Allott stated this is a witness he would like to have the opportunity to cross-examine. At this time Mr. Allott stated he also has an affidavit he received today of a witness who was unable to be present at tonight's meeting. It was discussed that this petition be continued so there could be live testimony. Mr. Ruggiero suggested that the Board skip over this aspect in regards to the evidence that would be offered from these particular witnesses who are not available tonight and continue with the petition.

At this time Mr. Leary called the Building/Zoning Official as a witness. Mr. Eames was sworn in and testified he issued the sign permit in the belief that the Back

Alley Woodworks was a preexisting nonconforming use. There was no cross-examination by Mr. Allott.

Paul Cellemme, an abutter was sworn in and testified he has been living at his present address since 1975. Mr. Cellemme went on to testify he remembered the back shed was a tile business and it hasn't been in operation for at least three years. There was no cross-examination by Mr. Allott.

At this time, Mr. Leary stated he had no further witnesses aside from Mr. Booth and would like to continue. Mr. Allott stated his clients would also like to continue. Ms. Krumholz made a motion to continue this matter to the July meeting. Ms. Gescheidt seconded. The vote was four to one. Voting in favor were: Vice-Chairman Mr. Jackson, Ms. Gescheidt, Ms. Krumholz and Mr. Mello. Opposed was Mr. Taylor.

3. Remanded by Superior Court to allow for the introduction of new evidence and reconsideration by the board of their decision dated April 3, 2008 on the matter of: A petition has been filed by Bryan N. Sanford, Jr. of 84 Cynthia Avenue, Tiverton, RI appealing a decision of the Tiverton Building/Zoning Official to issue a notice of violation dated January 28, 2008 to cease and desist construction of a new single family dwelling located at Cornell Road (0 Crandall Road) Tiverton, RI being Map 4-8 Block 140 Card 4 on Tiverton Tax Assessor's Maps and located in a R80 zone.

DECISION:

Attorney Christopher Murphy representing the petitioners gave a brief overview of this matter that was heard by this Board in 2008. Mr. Ruggiero informed the Board the purpose of tonight's meeting is to listen to new evidence.

Attorney Murphy presented the Board with a copy of case law regarding *Carvalho vs. Members of the Tiverton Zoning Board* and a copy of the transcript of the deposition of Jodi Roy. The chairman marked the case law as Exhibit A and the transcript as Exhibit B.

Mr. Murphy pointed out to the Board that the judge decided that Cornell Road in 1987 was dedicated and accepted by the Town. One of the issues last year with this petition was the Town had said the petitioner failed to prove that Cornell Road was a town owned road. There was extensive discussion regarding this case law. Mr. Murphy read excerpts from Ms. Roy's deposition transcript.

Mr. Stephen Berlucchi, Town of Tiverton Director of Public Works, was sworn in and presented the Board with a sketch he drew and a document labeled Tiverton Street Listing that lists every road in town. The Chairman marked these Zoning Board of Review Minutes, June 3, 2009 – Page 4

documents as exhibits. Mr. Berlucchi stated in this particular case, Cornell Road is a road that is a right-of-way. He went on to describe Cornell Road as a road that stretches from King up to Bulgarmarsh and is a stretch of land that is owned by the Town but only two sections are improved to the state of calling it an accepted town road. The two sections are located on the northern and southern ends. The 750 foot end from Bulgarmarsh is paved and it's been accepted by the Town as a town road. The southern end is around 2,900 feet and that has been accepted as a town road. Mr. Berlucchi went on to say in order for a road to be accepted, it has to be accepted by the Town Council.

Mr. Berlucchi presented photos of the .8 miles of the unapproved lane down the middle of the northern and southern ends. Mr. Berlucchi stated the path is wide enough to drive down but suggested driving a truck rather than a car because it is bumpy. The Board and Attorney Murphy asked Mr. Berlucchi questions. Mr. Berlucchi stated the Sandywoods Farm Subdivision will not reach the .8 miles of unapproved lane.

Upon further discussion among the board members, it was decided this matter should be continued until the July meeting so the Board can review the original decision and the court transcript. There was no objection from the petitioner. Mr. Jackson made a motion to continue and Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Taylor and Mr. Jackson.

ADMINISTRATIVE ISSUES:

Mr. Ruggiero informed the Board the Tiverton Yacht Club filed two appeals to a recent notice of violation that the Building/Zoning Official issued. The Courts told the Yacht Club to cease the continued use of the dock at Riverside Drive as a marina. Mr. Eames sent them a notice of violation and that is what was appealed. Mr. Ruggiero also stated as part of the appeals, the Yacht Club is asking whether the Board will consider having a special hearing on this issue prior to the July meeting. The letter from the Yacht Club was read into the record.

Mr. Ruggiero advised the Board there are several motions being heard this month on this matter and Mr. Ruggiero is going to file a motion with the Court that this matter is not properly before the Board. It was Mr. Ruggiero's opinion that this issue belongs before the Court and not before this Board as an

appealable action. Mr. Ruggiero recommend that the Board put this matter on for the July 1st meeting and not have a special hearing because it may not even

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come before the Board in July anyway. Mr. Taylor made a motion to not have a special meeting as recommended by Mr. Ruggiero. Mr. Mello seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Taylor, Mr. Jackson and Mr. Mello.

The Chairman reminded the Board there will be elections at the next meeting.

Ms. Krumholz made a motion to adjourn the meeting. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Taylor, Mr. Jackson and Mr. Mello.

(Whereupon the June 3, 2009 Zoning Board of Review meeting ended at 10:04 pm.)

ZBR/ssf